

1 HUESTON HENNIGAN LLP
John C. Hueston (164921)
2 *jhueston@hueston.com*
Steve N. Feldman (281405)
3 *sfeldman@hueston.com*
523 West 6th Street, Suite 400
4 Los Angeles, CA 90014
Telephone: (213) 788-4340
5 Facsimile: (888) 775-0898

6 MONROY, AVERBUCK & GYSLER
Jon F. Monroy (51175)
7 Jennifer E. Gysler (143449)
32123 Lindero Canyon Road, Suite 301
8 Westlake Village, CA 91361
Telephone: (818) 889-0661
9 Facsimile: (818) 889-0667

10 Attorneys for Defendants
NUTRAMARKS, INC., NUTRAPURE, INC., and
11 NUTRACEUTICAL CORPORATION

12
13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 CYNTHIA HAMMOCK, SHERRY
16 BENTLEY and LINDA LOVE, on
behalf of themselves, all others similarly
17 situated, and the general public,

18 Plaintiffs,

19 vs.

20 NUTRAMARKS, INC., NUTRAPURE,
INC., and NUTRACEUTICAL
21 CORPORATION,

22 Defendants.
23
24
25
26
27
28

Case No. 3:15-cv-2056 BTM NLS

**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISMISS PLAINTIFFS' CLASS
ACTION COMPLAINT**

Date: December 4, 2015

Time: 11:00 a.m.

Judge: Hon. Barry T. Moskowitz

Courtroom: 15B

Per Chambers, No Oral Argument Unless
Requested by The Court

Complaint Filed: September 15, 2015

Trial Date: None Assigned

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on December 4, 2015 at 11:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Barry T. Moskowitz, located at 333 West Broadway, San Diego, California, 92101, Defendants will and hereby move to dismiss Plaintiffs' Complaint under Federal Rule of Civil Procedure 12(b)(6). This Motion is made on the following grounds:

1. Plaintiffs failed to state claims for which relief can be granted because they did not adequately plead that Nutraceutical's products are falsely advertised.
2. Plaintiffs failed to state a claim for injunctive relief because they lack standing to obtain such relief.
3. Plaintiffs failed to state a claim for punitive damages because they failed to adequately plead specific facts to support their claim.
4. Plaintiffs failed to state claims for breach of implied warranty under California and Florida law, as well as breach of express warranty under Florida law because Plaintiffs are not in privity with Nutraceutical.

This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, and the supporting declaration and exhibits filed herewith, as well as all other pleadings, records, and papers filed in this action, and upon such matters as may be presented to the Court at the hearing on this Motion.

Dated: October 9, 2015

HUESTON HENNIGAN LLP

By: /s/ John C. Hueston

John C. Hueston

Attorneys for Defendants
NUTRAMARKS, INC., NUTRAPURE,
INC., and NUTRACEUTICAL
CORPORATION